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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IYO, INC.,

Plaintiff,

vs.

IO PRODUCTS, INC., OPENAI, INC.,
OPENAI, LLC, SAM ALTMAN, and SIR
JONATHAN PAUL IVE,

Defendants.

Case No. 3:25-cv-04861-TLT

**DEFENDANTS' OPPOSITION TO
MOTION FOR ORDER TO SHOW
CAUSE RE CONTEMPT**

Judge: Hon. Trina L. Thompson

Hearing: September 9, 2025 at 10 am

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INTRODUCTION

Following this Court’s issuance of a temporary restraining order (the “Order”), Defendants took quick action to ensure beyond any doubt that they complied with the letter and spirit of the Order. Although nothing in the Order specifically directed Defendants to so, in an abundance of caution, they took down the video and website announcements of the pending merger between OpenAI and io Products, Inc., which they had posted on May 21, 2025.

On July 9, 2025, the merger between io Products, Inc. and OpenAI was finalized, and Defendants announced that merger, ensuring compliance with the Order. The July announcement does not market or sell any products. As such, it does not violate the Order, which enjoins use of “the IO mark in connection with the marketing or sale of related products.” Dkt. 51 at 21. Nonetheless, Plaintiff, having made no effort to raise its purported concern with Defendants before filing, moved for an order to show cause re: contempt. Demonstrating the true motivation for its filing, for which it issued a press release, Plaintiff now seeks “coercive sanctions” of “at least \$325,000 per day” with no justification for this amount. There is no cause to hold Defendants in contempt, much less order sanctions.

First, Plaintiff’s motion rests not on the plain text of the Order, which Defendants did not violate, but on the language Plaintiff *proposed* that would have barred Defendants from using “io” in almost any context whatsoever. The Court did not adopt Plaintiff’s language, however, and instead enjoined Defendants more narrowly from using the “mark in connection with the marketing or sale of related products.” Dkt. 51 at 21. That language does not prohibit Defendants’ merger announcements. Indeed, the Court’s express finding that Plaintiff cannot allege actual infringement at this time depends on Defendants’ May announcement and video *not* constituting actionable marketing of a product.

Second, the July announcement would not violate the Order even if the original announcements somehow did. Promptly after receiving the Order, Defendants took down the May announcements to avoid any argument that they were violating the Order while they assessed its scope. Defendants did this even though the announcements did not mention a “related product,” much less market one or offer it for sale. Removing the announcement caused irreparable harm to

Defendants due to public speculation as to whether the merger would still occur and mistaken assumptions that it would not. As a result, after the merger was completed on July 9, Defendants posted a written announcement to confirm the merger. That announcement was carefully edited to avoid any suggestion that io Products, Inc. was marketing or selling products and to ensure that every mention of “io” unambiguously refers to the company name, as opposed to possibly being construed as the name of any product. Thus, the July announcement complies with the Order, or, at the very least, substantially complies with the Order.

Third, even if the Court ultimately decides that Defendants’ interpretation of the Order is wrong, there is no credible argument that Defendants’ interpretation is unreasonable. Nor is there any credible argument that Defendants have acted in bad faith, given that they took prompt action to ensure compliance with the Order. As a result, Plaintiff has not—and cannot—show that Defendants lack a reasonable, good-faith interpretation of the Order, as is necessary to hold a party in contempt.

Finally, Plaintiff’s requests for coercive sanctions as well as its attorneys’ fees are unjustified and excessive, and they demonstrate Plaintiff’s true motivation—to extract money from Defendants by any means possible. Coercive sanctions are inappropriate where, as here, Defendants have demonstrated a willingness to comply with the Court’s Order. If Defendants have misunderstood the scope of the Order, they will correct that by complying with the Court’s explanation of its meaning. Attorneys’ fees are not warranted where, as here, Plaintiff took no steps whatsoever to mitigate the need to file a motion, such as meeting and conferring with Defendants about the issue—or at least raising the anticipated motion during the parties’ meet and confer communications about the CMC statement, including the day before Plaintiff filed the motion—as Plaintiff was required to do consistent with the Standing Order for All Judges re Contents of Joint Case Management Statement.

The Court should not hold Defendants in contempt or award sanctions or fees.

STATEMENT OF FACTS

A. The May 21 Announcement And The Court’s Order

On May 21, 2025, Defendants announced that io Products, Inc. and OpenAI were merging

1 and pursuing a new joint venture. Dkt. 6-16 (Rugolo Decl., Ex. J). The announcement on OpenAI’s
 2 website contained an embedded video. The nine-plus minute video described how Altman and Ive
 3 began working together, and after the three-minute mark, for less than 10 seconds, Altman discussed
 4 a prototype Ive gave him. Dkt. 35-4, (Rugolo Reply Decl., Ex. M). Neither the video nor the
 5 website contained any product announcement—neither referred to the form factor, functionality,
 6 release date, or name of any product. *Id.*; Dkt. 6-16 (Rugolo Decl., Ex. J); *see also, e.g.*, Declaration
 7 of Sara Pollock (“Pollock Decl.”), ¶ 7, Ex. D (CNET article entitled “What to Expect (and Not
 8 Expect) From OpenAI and Jony Ive’s AI-Centric ‘Screenless Phone’”) (“[W]e remain for now in
 9 the dark as what this first piece of OpenAI hardware will look like, how it will function, and how it
 10 will fit into our lives.”). And neither the website announcement nor the video advertised or offered
 11 any product for sale. *Id.*; Dkt. 35-4, (Rugolo Reply Decl., Ex. M); Dkt. 6-16 (Rugolo Decl., Ex. J);
 12 *see also, e.g.*, Declaration of Hannah Wong (“Wong Decl.”), ¶¶ 2, 7; Dkt. 26 (Tan Decl.), ¶ 16.
 13 Nonetheless, Plaintiff sued for alleged trademark infringement.

14 On June 9, 2025, Plaintiff moved for a temporary restraining order, seeking to enjoin
 15 Defendants broadly “from using *by any means whatsoever*, directly or indirectly, Plaintiff’s IYO
 16 mark, and any mark confusingly similar thereto, including without limitation ‘IO.’” Dkt. 6 at 2
 17 (emphasis added). During the hearing on Plaintiff’s motion, Defendants’ counsel raised concerns
 18 regarding the breadth of Plaintiff’s requested injunction. As counsel explained, “what the plaintiff
 19 has asked for is that the defendants not be able to use ‘io’ in any way,” which would encompass
 20 innocuous uses. Dkt. 50 (June 17, 2025, Hearing Tr.) at 36:5-7. The Court addressed this concern,
 21 stating: “Let’s say the Court defined it and gave it a narrower scope, that the Court may agree that
 22 that’s broad. So let’s say the Court does narrow the scope.” *Id.* at 36:11-13. And it did. Dkt. 51 at
 23 21:18-19.

24 Following the hearing, on June 20, 2025, the Court issued its Order Granting Motion for
 25 TRO. The Order restrains Defendants from “using the IYO mark, and any mark confusingly similar
 26 thereto, including the IO mark *in connection with the marketing or sale of related products.*”
 27 Dkt. 51 at 21:18-19 (emphasis added). The Order does not—as Plaintiff now suggests (Mot. 4)—
 28 enjoin all Defendants’ uses “of the name ‘IO’ in connection with their new company/products.” For

1 purposes of preserving the status quo, the Court credited Plaintiff’s theory of imminent infringement
 2 based on *future* events (Dkt. 51 at 8:21-25), but it rejected Plaintiff’s theory that anything
 3 Defendants were doing, including display of the impending-merger announcement, actually
 4 infringed the mark, expressly finding that “Plaintiff cannot allege actual infringement” (*id.* at 8:21).
 5 Further, although the record was clear that OpenAI and io Products, Inc. were planning to merge
 6 soon (Dkt. 6-16 (Rugolo Decl., Ex. J)), the Order did not prohibit Defendants from announcing the
 7 merger being finalized.

8 **B. Defendants’ Response To The Order**

9 Upon receiving the Order, Defendants quickly acted to ensure that they would not possibly
 10 be in violation of the injunction. Usually, defendants have some time to consider the scope of
 11 interim injunctions because the injunctions only become effective upon the posting of a bond. Fed.
 12 R. Civ. P. 65(c) (“The court may issue . . . a temporary restraining order only if the movant gives
 13 security in an amount that the court considers proper . . .”). Here, however, no bond was ordered,
 14 and the Order became effective immediately. Dkt. 51 at 21. Accordingly, despite the fact that the
 15 Order restricts use of the marks only “in connection with the marketing or sale of related products,”
 16 Defendants removed the announcement of the pending merger (*see* Dkt. 6-16) and the
 17 accompanying video (*see* Dkt. 35-4) from the OpenAI website the day the Order issued while they
 18 evaluated the order. Wong Decl., ¶ 4. Defendants did so out of an abundance of caution and to
 19 avoid any potential argument that they were in violation of the Order, even though neither the
 20 announcement nor the video mentioned any “related product,” much less marketed one or offered it
 21 for sale. *Id.* ¶ 2.

22 The removal of the May 21 announcement and video occasioned press inquiries and industry
 23 speculation as to whether the merger between OpenAI and io Products, Inc. would still proceed.
 24 Wong Decl. ¶ 5. To address this speculation, and after further reviewing the Order, Defendants
 25 published a revised announcement on July 9, 2025—the same day that they consummated the
 26 merger. *Id.*, ¶¶ 6-7. That announcement begins:

Update July 9, 2025

We're thrilled to share that the io Products, Inc. team has officially merged with OpenAI. Jony Ive and LoveFrom remain independent and have assumed deep design and creative responsibilities across OpenAI.

Skale Decl., Ex. C. Although Defendants believe that continued display of the May announcement is permissible under the terms of the Court's Order because it did not market or sell any product, they revised its text in the July announcement to ensure that no reference to "io" could be misinterpreted as the name of a product. Wong Decl. ¶ 7. To further ensure that the July announcement could not be misinterpreted as promoting a product, Defendants even removed the reference to their "ambitions to develop, engineer and manufacture a new family of products" in the revised announcement. *Id.* Defendants also did not re-post the video that had accompanied the May announcement. *Id.*

C. Subsequent Procedural History

On July 10, 2025, the parties filed their joint case management statement. Dkt. 65. They met and conferred several times leading up to the filing, including through multiple phone calls the evening of July 10. Pollock Decl. ¶ 2. Although the Standing Order For All Judges Of The Northern District Of California: Contents Of Joint Case Management Statement, Motions, ¶ 4, requires each party to identify "any anticipated motions" as part of the case management statement, Plaintiff did not identify its motion for order to show cause re: contempt and sanctions in the joint statement or in any of its communications with Defendants. Pollock Decl. ¶¶ 2-3. The following morning, Plaintiff filed its motion, without any prior notice to Defendants that it believed Defendants were in violation of the Court's Order, or that it intended to move to find them in contempt and seek sanctions of \$325,000 per day. *Id.*

ARGUMENT

To justify a finding of contempt, Plaintiff must prove by clear and convincing evidence "(1) that [Defendants] violated the court order, (2) beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the order." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). Plaintiff has not met this heavy burden.

1 **I. PLAINTIFF’S REQUEST FOR A CONTEMPT SHOULD BE DENIED**

2 **A. Plaintiff Failed To Demonstrate That Even The Original May Announcement**
 3 **And Video Would Have Violated The Injunction**

4 Plaintiff’s erroneous contention that the Court enjoined Defendants’ announcements runs
 5 headlong into the Order’s plain text. As a result, Plaintiff cannot demonstrate with clear and
 6 convincing evidence that Defendants violated the Order.

7 The Court found that nothing Defendants were doing amounted to actual infringement.
 8 Dkt. 51 at 8:21. This finding alone resolves the issue: because the May announcement and video
 9 were not found infringing, they were not enjoined. In ruling that Plaintiff’s claim was ripe, the
 10 Court focused on the likelihood of *future* infringement—not ongoing infringement—because
 11 “Defendants have not yet released a product with the disputed mark[.]” *Id.* at 8:20-21; *see also id.*
 12 at 8:22-23 (“[T]he product *will* compete with Plaintiff’s product . . . the product *will be* called by
 13 the disputed mark . . . and the product *will be* released in at least a year[.]”) (emphases added). The
 14 Court concluded that Plaintiff’s suit could proceed, not because Defendants’ existing video and
 15 written announcements reflected ongoing infringement, but because the Court found that
 16 Defendants’ prototype signaled a *future* product that could bear the “disputed mark” and compete
 17 with Plaintiff’s products. *Id.* at 8:21-25. The Court’s subsequent application of the *Sleekcraft*
 18 factors implicated the announcements only insofar as they referenced the fact that Defendants might
 19 one day market the forthcoming product, not as if the existing video or announcement was
 20 infringing. *Id.* at 16:5-11. Thus, the Court enjoined only certain *future* acts, not any existing
 21 content. At no point did the Court adopt Plaintiff’s claim that the video or written announcement
 22 infringed. The Court rejected that position. *Id.* at 8:21.

23 Moreover, the single sentence setting forth the terms of the injunction prohibits Defendants
 24 from using the name “io” “in connection with the marketing or sale of related products.” *Id.* at
 25 21:18-19. Defendants’ May announcement and video did not constitute marketing, much less sale,
 26 of any product. *See, e.g.,* Wong Decl., ¶ 2; Dkt. 26 (Tan Decl.), ¶ 16. The July announcement is
 27 even further away from product marketing than the May announcement because it mentions “io”
 28 only when clearly referencing the name of the company as opposed to any possible argument it

1 referred to a product name. Wong Decl., ¶ 7. Accordingly, the July announcement lies comfortably
2 outside of the scope of the injunction.

3 Plaintiff's argument (Mot. 3) betrays the lack of textual support for its position. Plaintiff
4 contends that Defendants conceded the Court enjoined the original announcements because
5 Defendants temporarily removed them from the OpenAI website. *Id.* But Defendants' caution is
6 not a concession. *See* Wong Decl. ¶¶ 2, 4-8. Although Defendants removed the announcement and
7 video "due" to the Order—*i.e.*, but for the Order, they would have remained posted—the removal
8 was done so that Defendants could evaluate the scope of permissible use of the "io" name" without
9 any fear of violating the Order. *Id.*, ¶ 4. To find an implied concession in these circumstances
10 would create perverse incentives. Rather than being allowed to safely "overcorrect" in response to
11 an injunction, defendants would be compelled to risk contempt to establish the absolute edge of
12 what an injunction covers to avoid making any concessions about its scope. This would be judicially
13 inefficient and chill prompt compliance.

14 Plaintiff points to four passages of the Order that it claims support its position, but none do.
15 First, Plaintiff points (Mot. 4) to the Court's statement in the background section of its Order that
16 Defendants "announced IO's decision to make a new category of computer devices." Dkt. 51 at
17 3:15-16. But announcing a decision to create a new category of products does not itself constitute
18 marketing or selling of any product. Nor could it; as reflected in the press that followed the May
19 announcement, it was evident that the nature of any future product remained a mystery. Pollock
20 Decl., ¶¶ 5-7, Exs. B-D.

21 Second, Plaintiff points (Mot. 4) to the Court's rejection of Defendants' argument that "their
22 announcement . . . is insufficient to establish an actual or imminent injury." Dkt. 51 at 7:16-18. But
23 Plaintiff ignores the Court's reasoning—namely, that the announcement reveals imminent
24 infringement due to a future product, not actual infringement due to the announcement itself. *See*
25 *id.* at 8:20-21 ("[B]ecause Defendants have not yet released a product with the disputed mark, IYO
26 cannot allege actual infringement.").

27 Third, Plaintiff points (Mot. 4) to the Court's finding that "marketing channel convergence
28 weighs slightly in favor of infringement because of the overlap in customer bases and internet

1 marketing of products,” even though “[t]he parties devote[d] very little briefing to this factor.”
 2 Dkt. 51 at 16:5, 9-11. But this finding was plainly future-looking based on an anticipated product
 3 release given that there is no existing “customer base” for any product developed by io Products,
 4 Inc. because there are no such products. *Id.* at 8:20-21 (“Defendants have not yet released a product
 5 with the disputed mark[.]”).

6 Fourth, Plaintiff points (Mot. 4-5) to the Court’s summary of *Plaintiff’s argument* that
 7 Plaintiff seeks to enjoin Defendants from using the disputed mark “in connection with their new
 8 company/products” and that Defendants “could alter their brand and company name to comply with
 9 the TRO.” Dkt. 51 at 19:23-26. This is disingenuous. The Order clearly attributes the quoted
 10 language to Plaintiff, and the Court did not adopt that language in its final order, which barred the
 11 use of “io” only “in connection with the marketing or sale of related products.” *Id.* at 21:18-19.
 12 While the Court recognized that ultimately Defendants may need to change the “io” name if their
 13 venture begins selling products (*id.* at 20), the Order did not compel a name change at this time.

14 **B. Defendants’ Revised Announcement Complies With The Order**

15 Even if the Order could be read to reach the May announcements, which Defendants dispute,
 16 the subject of Plaintiff’s motion, the July merger announcement, cannot reasonably be construed as
 17 using the disputed mark “in connection with the marketing or sale of related products.” Dkt. 51 at
 18 21:18-19; *c.f. Halo Elecs., Inc. v. XFMRs, Inc.*, 2012 WL 1604858, at *3 (N.D. Cal. May 7, 2012)
 19 (concluding that “an order of contempt is not warranted” given the “plaintiff appeared to believe in
 20 good faith that its disclosure was [not a violation of the protective order]”). The July announcement
 21 confirms that the merger between two companies was completed, and it was tailored to avoid any
 22 possible interpretation that it was intended to market or sell products using the disputed mark. Wong
 23 Decl. ¶ 7. Publicly announcing a merger is a standard industry practice, and Defendants’ July
 24 announcement references the name “io” for the limited purpose of identifying the company that
 25 merged with OpenAI.

26 The July announcement references “io” four times. Skale Decl., Ex. C. Defendants
 27 confirmed that all four unambiguously refer to the name of a company, not to a product. Wong
 28 Decl. ¶ 7. Two of those four times use the full corporate name, “io Products, Inc.” Skale Decl.,

1 Ex. C. After the full corporate name was used, the announcement states that “Jony founded io with
 2 Scott Cannon, Evans Hankey and Tang Tan.” *Id.* This plainly refers to the company because only
 3 companies, not products, are “founded.” *See* Wong Decl. ¶ 7. Finally, the announcement quotes
 4 Jony Ive as stating: “The values and vision of Sam and the teams at OpenAI and io are a rare
 5 inspiration.” Skale Decl., Ex. C. Again, this reference to “io” makes sense only as reference to the
 6 company, not a product, because products do not have “values and vision.” Wong Decl. ¶ 7. As a
 7 result, the July announcement complies with the Court’s Order.

8 Further, the July announcement does not refer to any products “related” to iyO’s headphone
 9 products. Skale Decl., Ex. C. The July announcement’s reference to “products that inspire,
 10 empower, and enable” (*id.*), does not market any product (*see* Wong Decl. ¶ 7), and it is hard to
 11 imagine a statement of less specificity about the particular function or form a product will take. *See*,
 12 *e.g.*, Pollock Decl., ¶¶ 5-7, Exs. B-D. The July announcement does not even mention a prototype.
 13 Skale Decl., Ex. C. As such, it is not a mere “cosmetic revision” (Mot. 6) of the May
 14 announcements, as Plaintiff argues. Rather, it reflects Defendants’ good faith efforts to comply with
 15 the Order. Wong Decl. ¶¶ 4-8. Under these circumstances, Defendants, at a minimum, substantially
 16 complied with the Order. *See, e.g., Vans, Inc. v. Walmart, Inc.*, 2022 WL 17371058, at *3 (C.D.
 17 Cal. Oct. 24, 2022) (denying motion to show cause for civil contempt where “every reasonable effort
 18 has been made to comply” and, while there were a “few technical violations,” “Walmart [was] still
 19 in substantial compliance with the injunction”); *In re Dual-Deck*, 10 F.3d at 695 (vacating order of
 20 contempt where there were “three technical violations,” but defendant “failed to prove by clear and
 21 convincing evidence that under a good faith, reasonable interpretation of the protective order, [party]
 22 did not substantially comply with the order.”).

23 Plaintiff’s *ipse dixit* assertions that the July announcement constitutes “marketing material”
 24 for an “‘io’ brand” (*see, e.g.*, Mot. 6) are insufficient to carry its burden. *See Grooms v. Legge*, 2009
 25 WL 962067, at *14 (S.D. Cal. Apr. 8, 2009) (“Plaintiffs assert they believe defendants are
 26 withholding funds” but “[t]his bald accusation does not carry plaintiffs’ burden of proving a
 27 violation by ‘clear and convincing evidence.’”). Plaintiff’s speculation that the “people who saw
 28 the original May 21 post, and then saw the July 9 announcement, would have no reason to look for

the [supposedly] minute revisions” (Mot. 6) is irrelevant. The only material question is whether the revised announcement violates the Order. It does not.

C. At A Minimum, Plaintiff Fails To Show That Defendants Interpreted The Order In Bad Faith

Even if Defendants have misinterpreted the Order and had *substantially* violated it, their “good faith and reasonable interpretation” of the Order precludes a finding of contempt. *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006); *see also Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982) (“[I]f a defendant’s action ‘appears to be based on a good faith and reasonable interpretation of (the court’s order),’ he should not be held in contempt.”); *Vans*, 2022 WL 17371058 at *3 (finding no contempt where “[t]he defendants’ actions ‘appear[] to be based on a good faith and reasonable interpretation’ of the Court’s order”). Plaintiff cannot possibly make that showing given the Order’s textual support for Defendants’ position. *See supra* Section I.A; *see also Labor/Cnty. Strategy Ctr. v. Los Angeles Cty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123-24 (9th Cir. 2009) (contempt motion properly denied where the defendant’s obligations under the order were open to interpretation and the defendant’s efforts to comply with the order rebutted an “inference that [the defendant] was acting in bad faith”). Because Defendants obviously attempted to comply based on a reasonable and good-faith interpretation of the Order, they should not be held in contempt.

II. PLAINTIFF’S REQUEST FOR SANCTIONS SHOULD BE DENIED

Even if the Court finds contempt—and it should not—the Court need not impose coercive sanctions, and certainly not the exorbitant monetary penalty that Plaintiff requests. Likewise, an award of attorneys’ fees is not appropriate, particularly given that Plaintiff failed to take any—let alone reasonable—steps to mitigate the need for motion practice, such as meeting and conferring with Defendants, or at least identifying the anticipated motion in the CMC Statement, as it was required to do. Plaintiff’s requests for coercive and compensatory sanctions should be denied.

A. Sanctions Are Unwarranted

Plaintiff’s demand that the Court impose \$325,000 *per day* in coercive civil sanctions is unjustified. *See* Mot. 8. Not only has Plaintiff not shown a reasonable basis for such steep fines,

1 but **no** amount of sanctions are necessary given Defendants’ demonstrated willingness to act
 2 promptly to comply with the Court’s orders. Wong Decl. ¶¶ 7-8.

3 When imposing coercive sanctions for civil contempt, Courts should apply the “least
 4 coercive sanction reasonably calculated to win compliance with the Court’s order.” *Mne Trucking,*
 5 *Inc. v. OJ Com., LLC*, 2025 WL 1810289, at *2 (C.D. Cal. June 27, 2025) (cited Mot. 7); *see also*
 6 *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992) (similar). Coercive sanctions
 7 are “wholly remedial, serve[] only the purposes of the complainant, and [are] not intended as a
 8 deterrent to offenses against the public.” *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d
 9 770, 778 (9th Cir. 1983). In formulating coercive sanctions, a court must “consider the character
 10 and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of
 11 any suggested sanction in bringing about the result desired.” *Whittaker Corp.*, 953 F.2d at 516
 12 (citation omitted).

13 Here, the “least coercive sanction” necessary is clarification of the Order and the
 14 identification of any language of the July announcement that the Court finds violates its Order. The
 15 Court should award no further sanction because Defendants have made a good faith effort to comply
 16 with the Order and will similarly comply with any modification or clarification. Wong Decl. ¶¶ 4,
 17 7-8. As discussed above, Defendants took down the announcement video and revised the written
 18 announcement, and while Defendants believe they have complied with the Order, they will make
 19 further changes if the Court finds them necessary. *Id.* Unlike in the authority cited by Plaintiff
 20 (Mot. 7), there has been no months-long, “well documented” campaign of noncompliance with
 21 multiple Court orders or injunctions that could justify further sanctions. *Yan v. Lei*, 2019 WL
 22 7879950, at *2–3 (N.D. Cal. Nov. 12, 2019), *report and recommendation adopted*, 2020 WL 613959
 23 (N.D. Cal. Jan. 15, 2020) (granting sanctions for failure to produce the specific documents the court
 24 ordered by the specific deadline the court set).

25 Further, Plaintiff has not established why either the “character and magnitude of the harm
 26 threatened” or the “probable effectiveness of any suggested sanction” supports its request.
 27 *Whittaker Corp.*, 953 F.2d at 517. As to the first factor, Plaintiff offers no argument whatsoever
 28 regarding the harm that Plaintiff (or members of the public) faces, or any legitimate risk of continued

1 non-compliance, which is the appropriate focus of this inquiry. Mot. 7; *cf. Whittaker Corp.*, 953
 2 F.2d at 516 (affirming as modified an award of civil sanctions because the Court “consider[ed] the
 3 tremendous danger to airline passenger safety which defendants’ actions may have posed, as well
 4 as to [plaintiff’s] goodwill”). Plaintiff’s lone contention—that Defendants “thumb[ed] their noses
 5 at IYO and the Court” (Mot. 7)—is false. *See generally* Wong Decl. ¶¶ 4-8. And Plaintiff
 6 improperly asks the Court to punish Defendants, placing the request outside the scope of coercive
 7 civil sanctions. *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 2012 WL 2344081, at *6 (N.D. Cal.
 8 June 20, 2012) (“punitive purposes” are “not permitted for civil sanctions”); *see also Falstaff*
 9 *Brewing Corp.*, 702 F.2d at 779 (finding requested sanctions were not properly categorized as civil
 10 sanctions where “Miller’s renewed motion sought the sanction of contempt against Falstaff as
 11 punishment for disobedience.”). As to the second element, as discussed above, monetary sanctions
 12 would not effectively induce any further compliance with the Court’s order because OpenAI will
 13 promptly remove any language that the Court believes is offensive. *See SunEarth, Inc.*, 2012 WL
 14 2344081 at *6 (denying coercive civil sanctions that were “not required to coerce compliance”);
 15 Wong Decl. ¶ 8. Therefore, neither consideration favors imposing any sanction.

16 Plaintiff’s reliance on *Coleman v. Newsom* to attempt to justify its exorbitant sanctions
 17 calculation (Mot. 7-8) further demonstrates the impropriety of imposing sanctions here, let alone
 18 sanctions of the magnitude Plaintiff seeks. *Coleman* addressed the State’s systematic failure to
 19 improve the care of state prisoners’ mental health over the course of three decades by not hiring
 20 adequate personnel—not a commercial dispute concerning a merger announcement. 131 F.4th 948,
 21 952-53 (9th Cir. 2025). And even in *Coleman*, the district court did not reach the issue of coercive
 22 sanctions until after “years of unsuccessful remedial orders” and “years of patience by the judicial
 23 system” proved unsuccessful—and it still gave the state *four months* from issuance of its order to
 24 avoid accruing fines altogether. *Id.* at 952-53, 963. Moreover despite decades of the State’s non-
 25 compliance, the Ninth Circuit affirmed only in part because it found the amount may constitute an
 26 “excessive penalty.” *Id.* at 965. Plaintiff’s reliance on a case concerning the longstanding and
 27 ongoing denial of health care services to a statewide class of California inmates underscores the
 28 extreme circumstances that can justify financial sanctions. No such circumstances are present in

1 this commercial dispute. Moreover, the amount of sanctions in *Coleman* was tied to a
 2 straightforward theory to compel compliance—“eliminating the savings [the state] achieved” by not
 3 complying with the injunction, *i.e.*, by failing to hire a sufficient number of mental health personnel.
 4 *Id.* at 965. It was not based on a theory of what the State could afford to pay, its overall budget, or
 5 how much it paid for prisons. *See id.* In contrast, Plaintiff’s figure is not based on any purported
 6 amount of cost savings or unjust enrichment, but on Plaintiff’s bald assertion that “there is no dispute
 7 that Defendants invested \$6.5 *billion* in their IO venture[.]” Mot. 8. Contrary to Plaintiff’s
 8 suggestion, OpenAI acquired io Products, Inc. in an all-stock transaction. *See Pollock Decl., Ex. E.*
 9 Regardless, *Coleman* in no way supports the fact or the amount of Plaintiff’s sanctions demand.

10 Although Defendants need no coercion to comply with the Order and any further
 11 clarifications the Court may make, should the Court decide to impose coercive sanctions, these
 12 sanctions must adhere to stringent Ninth Circuit requirements, which Plaintiff omits from its brief.
 13 First, any sanction “should be designed to give Defendants one last chance to comply with the
 14 injunction—for instance, by ordering that Defendants cease the infringing and order-violating
 15 activity within seven days in order to avoid” potential sanctions. *Westside Shepherd Rescue of Los*
 16 *Angeles, Inc. v. Pollock*, 2010 WL 11520530, at *2 (C.D. Cal. Jan. 14, 2010). Especially where, as
 17 here, Defendants have expressed their willingness to comply with the full scope of the Court’s Order
 18 (Wong Decl., ¶¶ 4, 7-8), the Court should give Defendants an opportunity to cure. Second, any
 19 coercive civil sanction can only begin to accrue after the date of the Court’s contempt order, as
 20 coercive civil sanctions must be “purgeable.” *Coleman*, 131 F.4th at 962 (“[T]he ability to purge is
 21 perhaps the most definitive characteristic of coercive civil contempt.”) (citation omitted). Third,
 22 any coercive sanctions must be payable to the Court, not to Plaintiff. *See Gen. Signal Corp. v.*
 23 *Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986) (“If the fine, or any portion of the fine, is
 24 coercive, it should be payable to the court.”).

25 **B. Plaintiff Has Failed To Establish That It Is Entitled To Fees And Costs**

26 Plaintiff’s request for attorneys’ fees should be denied in its entirety as Plaintiff has failed
 27 to meet its burden of proving entitlement to such relief under the applicable legal standard.

1 Before filing this motion, Plaintiff easily could have raised the alleged violations with
2 Defendants directly to discuss its position and hear Defendants' explanation, as the parties were
3 working closely together regarding their joint case management statement filed less than 15 hours
4 before this motion. Pollock Decl. ¶¶ 2-3. Indeed, the Standing Order For All Judges Of The
5 Northern District Of California: Contents Of Joint Case Management Statement, required them to
6 do so. Yet Plaintiff said nothing of its intent to file a contempt motion during multiple telephonic
7 communications with Defendants' counsel and never requested a meet and confer, foreclosing the
8 opportunity for the parties to address this matter without the need for Court intervention. *Id.* Instead
9 of attempting to conserve judicial resources, Plaintiff rushed to this Court with a motion calculated
10 to generate media attention and pressure Defendants, rather than to obtain any appropriate relief
11 concerning references to "io" in a merger announcement. *See* Pollock Decl., ¶ 4 Ex. A (iyo July
12 15, 2025 press release touting its contempt motion).

13 Plaintiff's reliance on *Institute of Cetacean Research v. Sea Shepherd Conservation Society*
14 is misplaced. Mot. 8 (citing 774 F.3d 935 (9th Cir. 2014)). The case involved a defendant who
15 deliberately aided and abetted another actor to circumvent the Court's injunction, knowing full well
16 that the other actor's conduct was highly likely to be prohibited by the injunction. *Id.* at 958. Under
17 those circumstances, the court found an award of attorney's fees and costs to be proper. Here, in
18 contrast, Defendants' conduct throughout this matter has been in good faith based on their
19 reasonable interpretation of the Court's Order. *See supra* at I.C; Wong Decl. ¶¶ 4-8. There is no
20 intentional circumvention of the Court Order, nor is there willful conduct to flout the injunction. *Id.*
21 An award of attorney's fees and costs is unwarranted.

22 CONCLUSION

23 The Court should decline to hold Defendants in contempt and deny Plaintiff's motion for
24 fees and costs.

1 Dated: July 25, 2025

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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4 Margret M. Caruso

5 *Attorneys for Defendants io Products, Inc.,*
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7 Dated: July 25, 2025

JONES DAY

8
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